

OPINION
47-9

April 10, 1947 (OPINION)

AERONAUTICS

RE: Airport Development - Federal Funds

This will acknowledge your letter of April 7, 1947, in which you seek interpretation of section 6 of Senate Bill 40, passed by the 30th legislative assembly, and which under a recent opinion we held would become effective as the law of this state on July 1, 1947.

You state that it is the considered opinion of your office that all federal moneys appropriated for airport development in this state should, under the terms of section 6 of Senate Bill 40, be deposited in the state treasury to be transferred and expended by the commission in accordance with the terms and conditions prescribed by the United States. You further state that it is the considered opinion and belief of the commission that it should not act as an agent for any municipality or person except upon request from such municipality or person.

In order to have the proper background for an answer to your inquiries, I quote section 6 of Senate Bill 40 as follows:

The commission may act as agency of all municipalities in accepting, receiving, receipting for, and disbursing federal moneys, made available to finance, in whole or in part, the planning, acquisition, construction, improvement, maintenance or operation of municipal airports or air navigation facilities. The commission, as principal on behalf of the state, and for any municipality, may enter into any contracts, with the United States, with any municipality, or with any person, which may be required in connection with a grant or loan of federal moneys for municipal airport or air navigation facility purposes, provided that no contract shall be entered into on behalf of any municipality except pursuant to written request of such municipality. All federal moneys accepted under this section shall be accepted and transferred or expended by the commission upon such terms and conditions as are prescribed by the United States. All moneys received by the commission pursuant to this section shall be deposited in the state treasury, and unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purpose for which the moneys were made available, and held by the state for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available."

Section 6 was somewhat amended by the legislative assembly in the process of enactment. On February 5, 1947, the journal of the Senate shows that the commission (that is the aeronautics commission) created by Senate Bill 40 was, by the terms of this section, made the

agent of every municipality. As quoted above, section 6 does not obligate the commission to set as the agent of any municipality, but it may so act.

Accordingly, it is the opinion of this office that it does not become the agent of any municipality or person until such municipality or person has requested in writing that the commission act as agent for such municipality or person. It is within the discretion of the commission to devise a form which may be used by any municipality or person to constitute the commission the agent of the municipality for the purposes set forth in section 6 of Senate Bill 40.

It is further the opinion of this office that you are entirely correct in your assumption that all federal moneys appropriated for airport development in North Dakota should be deposited with the state treasury. Section 6 says so in so many words "all moneys received by the commission pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority (which I deem to be the federal authority) from which such moneys were received, shall be kept in separate funds designated according to the purpose for which the moneys were made available, and held by the state for such purposes."

It must necessarily be true that since the commission is not automatically, under section 6 of Senate Bill 40, the agent of any municipality or person applying for funds for airport purposes that it will accept, receive, and receipt for such funds only after it has been appointed as the agent for such municipality or person and then it must, as commanded by the statute, deposit the moneys in the state treasury, unless otherwise prescribed by the authority.

This office will send a copy of this opinion to the Department of Justice, Washington, D.C., and ascertain whether such department agrees therewith and ask for any comments. We will further ascertain whether section 6 of Senate Bill 40 complies with and is sufficient to enable any person or municipality in the state of North Dakota to obtain available funds for acquisition, construction, improvement, maintenance or operation of any municipal airport or air navigation facility, and whether section 6 is in all respects sufficient and within the requirements set up by the federal law.

NELS G. JOHNSON

Attorney General